



STATE OF INDIANA

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Mike Schmuhl
1200 County-City Building
227 W. Jefferson Blvd.
South Bend, Indiana 46601
Via email: mschmuhl@southbend.in.gov

Re: *Informal Inquiry 12-INF-03; Caucuses*

Dear Mr. Schmuhl:

This is in response to your informal inquiry regarding caucuses in relation to the Open Door Law ("ODL"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.*

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a). The ODL is applicable to those entities considered to be a governing body of a public agency. *See* I.C. § 5-14-1.5-2(a), (b).

The ODL defines a "meeting" as gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. *See* I.C. § 5-14-1.5-2(c). A "caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members to take official action. *See* I.C. § 5-14-1.5-2(h). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). The ODL expressly provides that a "caucus" is not a "meeting." *See* I.C. § 5-14-1.5-2(c)(4).

The Indiana Supreme Court has provided the following analysis regarding caucuses:

Under the Indiana Open Door Law, "caucus" is defined as "a gathering of members of a political party or coalition which is held for purposes of

planning political strategy and holding discussions designed to prepare the members for taking official action." I.C. § 5-14-1.5-2(h). The nature of such political meetings will often necessarily involve receiving information, deliberating expected issues, and holding discussions concerning anticipated official action and public business. If the persons attending such meetings happen to constitute a majority of a governing body, such a caucus is not thereby transformed into a meeting subject to full public scrutiny under the Open Door Law. It is the taking of official action which changes the character of a majority political party strategy meeting from a private caucus to a public meeting. *Evansville Courier v. Willner*, 563 N.E.2d 1269, 1271 (Ind. 1990).

In *Willner*, the Court found the caucus exemption inapplicable where a majority of the governing body met prior to the official meeting, deliberated and decided on the selection of a new superintendent, held a subsequent press conference prior to the official meeting of the governing body, and had all of the appointment paperwork prepared for signatures prior to the official meeting. *Willner*, 563 N.E.2d at 1270; *see also Evansville Courier v. Willner*, 553 N.E.2d 1386 (Ind. Ct. App. 1990). *Willner* is the only case that I am aware of where the Indiana Supreme Court or Court of Appeals has discussed the substantive provisions of the ODL as it relates to caucuses.

In a prior opinion of the Public Access Counselor's Office, a properly held caucus was found where a majority of the governing body met in a caucus to discuss the budget and may have "pre-determined their *positions* in that caucus" (emphasis added). *See Opinion of the Public Access Counselor 03-FC-95*.¹ As there was no evidence submitted that members of the governing body had made a decision on the budget or any issues related to the budget during the caucus and that the budget was thereafter fully discussed and voted upon at an open meeting, the advisory opinion found that no violation of the ODL had occurred. *Id.* As with prior case law regarding caucuses, there are few prior opinions of the Public Access Counselor's office directly addressing caucuses.

Official action may not take place at a caucus. Members of a governing body in a caucus can hold discussions preparing them to take official action, but may not actually take official action. Undoubtedly, there is a fine line between taking "official action", which can be as little as receiving information, and holding discussions designed to prepare members for taking official action. I would caution those members of a governing body planning to hold a caucus to keep in mind that transparency and accessibility are the hallmarks of the ODL, and to be mindful of the definition of "official action" when holding a caucus.

Another factor to consider is that the caucus must first constitute a "meeting" pursuant to the ODL before the exemption is analyzed. If less than a majority of the members of the governing body were to caucus, one would not need to analyze the caucus exemption, as the ODL would not apply to such a gathering. *See Opinions of the*

¹ All formal opinions referenced may be found at www.in.gov/pac.

Public Access Counselor 08-FC-51 and 09-FC-17. For example, if two republican members of a five-member council met to discuss issues before the council, the ODL would not be applicable as such a gathering would not be considered a “meeting.” However, if three republican members met of a five-member council, those members would have to comply with the requirements of the ODL and be mindful so as to not take official action.

A caucus may be convened by members of a political party or coalition. Webster’s Dictionary defines “coalition” as an alliance of persons, parties, or states. *New International Webster’s Dictionary*, Trident Press International, 2000. Thus, it would technically be possible for members of different political parties to caucus if they were part of a coalition. For example, if two Republicans and one Democrat from a five-member council were part of a coalition that supported the construction of a bridge; those members could caucus regarding the issue. Discussion held in such a caucus would be limited to the topic of which the coalition was formed (i.e. construction of the bridge). Again, no “official action” could be taken at such a caucus. The general rule and assumption regarding caucuses are that it would be a convening of members of the same political party of a governing body. Members of different political parties, where a coalition would not exist, could not meet to discuss issues before the governing body and classify that meeting as a caucus.

The ODL is silent as to the frequency of which a caucus may be held. As long as the political party or coalition was not taking official action in the caucus, it would not be violating the ODL.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'Joe Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor